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VIA ECF

The Honorable Mary Kay Vyskocil, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 2230
New York, NY 10007

Re: Penske Media Corp. v. Shutterstock, Inc., 20-cv-4583 (MKV)

Dear Judge Vyskocil:

Pursuant to Your Honor's Case Management Plan and Scheduling Order, plaintiff Penske Media Corporation ("PMC") and defendant Shutterstock, Inc. ("Shutterstock") jointly submit this letter in advance of the July 7, 2021 Status Conference.

Existing Deadlines, Due Dates, and/or Cut-Off Dates

The existing Case Management Plan and Scheduling order provides for completion of fact discovery by August 16, 2021, except for discovery that pertains to the claims that are the subject of Shutterstock's motion to dismiss, which is stayed pending the resolution of that motion. The order further provides that the parties are to address expert discovery at the upcoming conference.

Outstanding Motions

Shutterstock's Motion to Dismiss the Second, Third, and Fourth Causes of Action in the Amended Complaint is pending before the Court. There is no hearing date currently scheduled for this motion.

Discovery

Discovery on the claims subject to the motion to dismiss is stayed. Discovery is ongoing with respect to the non-stayed claims. Both parties have served and responded to initial written discovery, and are in the process of meeting and conferring regarding responses. The parties are working to stipulate to certain facts to limit the necessary discovery and are in the process of collecting and producing documents. The parties have not yet served and/or responded to written discovery that is relevant only to the claims subject to Shutterstock's pending motion to dismiss and will need to do so after that motion is decided if it is not granted in full.¹

In light of the discovery stay, the Court recognized at the parties' prior conference that the case schedule may need to be adjusted depending on the timing of the Court's ruling on the motion to

¹ PMC served its written discovery demands before the Court granted Shutterstock's request for a stay of discovery and PMC's discovery includes certain demands that relate solely to the stayed claims. PMC agreed that Shutterstock did not need to respond to those demands in light of the stay.



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dismiss and allowed that depositions should be deferred until after such a ruling. The parties intend to schedule depositions after the Court's ruling on the motion to dismiss. Depending on the outcome of that ruling and which of PMC's additional claims remain in the case, various depositions will need to await the exchange of further written discovery on the claims that are the subject of the motion to dismiss.

In particular, a substantial number of witnesses have knowledge as to issues relevant to both those claims that are stayed pending the Court's resolution of Shutterstock's motion to dismiss and those that are not stayed. As the Court previously recognized, deferring those depositions until after the discovery stay is lifted, and written discovery is complete on the claims, if any, to which discovery is currently stayed will avoid duplicative depositions and questioning on topics that may prove to be irrelevant depending on the outcome of the motion. The parties therefore request that the Court extend the fact discovery deadline to October 29, 2021.

Settlement Discussions

The parties have discussed mediation. Shutterstock requested early mediation, but PMC disagreed and requested the fact discovery be completed prior to any mediation. At the prior conference, the Court stated that it would, at this upcoming conference, refer the parties to a settlement conference before the presiding Magistrate Judge. Shutterstock renews its request for a referral to mediation, preferably before a private mediator, to allow for more than a half day of mediated discussion and at a date that may be available sooner than one that the District's very busy Magistrate Judges have available.

PMC does not wish to engage in private mediation at this time and would elect to mediate before a Magistrate Judge and believes that a mediation before such a Judge could extend beyond half a day.

Length of (Jury) Trial

The parties anticipate that a jury trial would take 6 days if Shutterstock's motion is granted, and 9 days if the motion is not granted.

Upcoming Potential Motions

Depending on the outcome of its Motion to Dismiss and the material elicited from discovery, both parties may file a motion for summary judgment. As the parties have not yet conferred on expert discovery, they do not yet know whether there will be motions in limine as to experts.

Other Issues

The parties anticipate submitting a protective order shortly.



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Respectfully submitted,

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